

REMARKS

The present communication is responsive to the Final Office Action mailed March 30, 2010. A two-month extension of time extending the period of reply from June 30, 2010 up to and including August 30, 2010 is submitted herewith. A Request For Continued Examination is also submitted herewith.

Claims 1-8, 10-12, 14-20, and 22 were rejected in the Action. Claims 1, 14, 15 and 22 are amended herein. No claims are added or cancelled herein. Support for the amended claims can be found in at least paragraph [0153] of Applicants' originally filed disclosure. Applicants set forth remarks relating to the Action below.

Claims 1-8, 10-12, 14-20, and 22 were rejected under 35 U.S.C. § 112, first paragraph, because the Examiner asserted that that disclosure does not reasonably provide enablement for a plurality of "ways" other than the single positioning of the tool between the baseplates at the various locations. The Examiner acknowledged that the tool can be placed at various locations about the perimeter of the baseplates, but that the engagement of the tool and baseplates is only accomplished one way via a contact of the angled surfaces in one position between the baseplates. Applicants have amended independent claims 1 and 22 to more clearly define the subject matter of the claimed invention. Particularly, amended independent claims 1 and 22 recite, in part, that "the angled distal surface of the manipulation tool is engageable with the angled perimeter of at least one of the baseplates in a plurality of locations, each of the plurality of locations establishing a respective desired surgical approach angle for manipulating the intervertebral spacer device." As stated by the Examiner, it's clear that the manipulation tool can be placed at various locations about the perimeter of the baseplates. Applicants respectfully assert

that amended independent claims 1 and 22 are enabled and request the \$ 112, first paragraph rejection of the claims be withdrawn.

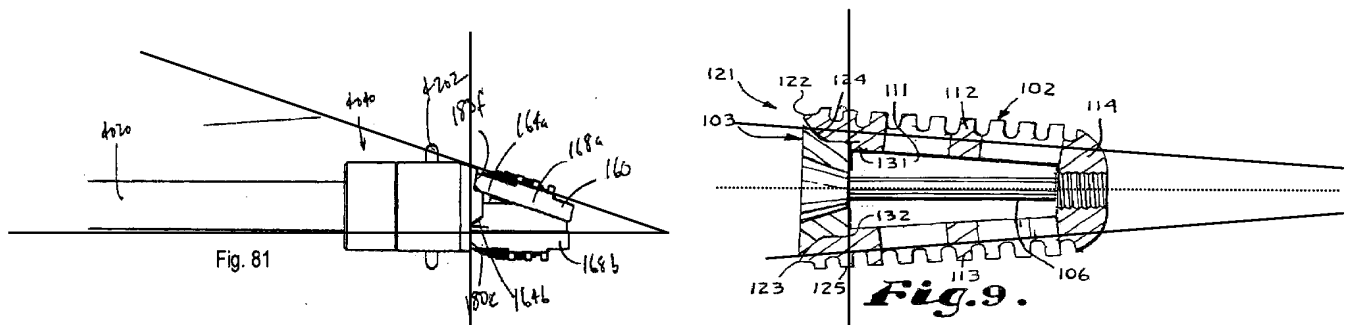
Further, the Examiner objected to the drawings asserting that the upper and lower angled surfaces of a spacer at the distal end of the tool "being engageable in a plurality of ways" with corresponding angled surfaces of baseplates of an implant must be shown or the features canceled from the claims. As stated above, independent claims 1 and 22 are amended herein to recite, in part, that "the angled distal surface of the manipulation tool is engageable with the angled perimeter of at least one of the baseplates in a plurality of locations." This is clearly described in at least paragraphs [00153]-[00155] of the originally filed disclosure and is shown in Figs. 59-70, for example.

The Examiner asserted on page 2 of the current Action that in Figs. 78 and 80 there is shown a set of angles on the plates and tool that correspond to one another to establish matching contours. While Figs. 78 and 80 show the manipulation tool engaged to the baseplates in one location, there is no structure on the tool or the baseplates that would preclude the tool from being engaged to the baseplates in other locations. As previously argued, there is clear support in at least paragraph [00153] of the originally filed disclosure stating that surfaces 4200a-f of inserter/impactor 4000 (shown in Figs. 71-82) are configured to engage corresponding surfaces 180a-f on disc 160. Further, the angled distal surface of inserter/impactor 4000 (i.e. the manipulation tool) is engageable with the angled perimeter of at least one of the baseplates (of disc 160) in a plurality of locations, each of the plurality of locations establishing a respective desired surgical approach angle for manipulating the intervertebral spacer device (i.e. anteriolateral approaches, directly lateral approaches, posteriolateral approaches as described in paragraph

[00153])). These surgical approach angles are clearly shown in Figs. 59-70 and one of ordinary skill in the art reading the disclosure of paragraph [00153] of the present application, for example, would understand how manipulation tool 4000 engages disc 160 in a plurality of locations to establish a respective desired surgical approach angle for manipulating the intervertebral spacer device. In light of the foregoing, Applicants respectfully request the current objection to the drawings be withdrawn.

Further in the Action, the Examiner rejected claims 1-8, 10-12, 14-20, and 22 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 6,117,637 to Gill *et al.* ("Gill") in view of WO 01/62191 to McGahan *et al.* ("McGahan") and U.S. Pat. No. 6,821,298 to Jackson ("Jackson"). The Examiner asserted that Fig. 1a of Gill discloses an intervertebral spacer device 20 having first and second baseplates 22, 24 that can articulate relative to one another. As the Examiner admits in the Action, the baseplates of Gill do not have an angled perimeter. however, the Examiner asserted that Gill as modified by McGahan can be said to disclose the claimed three flat perimeter surfaces converging to form two protruding corners that engage the three flat surfaces that converge to form recessed corners on the distal end of the tool. The Examiner then asserted that Jackson teaches a spinal device that has a spacer 103 having upper and lower angled surfaces 133 (shown in Fig. 12) and with the teaching of Jackson it can be said that the structure of the claimed tool and baseplate engagement is met by the modification. In other words, the Examiner asserted that it would have been obvious to one of ordinary skill in the art at the time of the present invention to combine Gill, McGahan, and Jackson to arrive at the present invention.

Independent claims 1 and 22 are amended herein to recite, in part, "wherein when the manipulation tool is engaged to the baseplates in any one of the plurality of locations, the first baseplate is lordodically angled with respect to the second baseplate as the lower surface of the first baseplate is held against the upper angled surface of the spacer and the angled perimeter of the second baseplate is parallel with respect to the angled distal surface of the manipulation tool as the angled perimeter of the second baseplate is held against the angled distal surface of the manipulation tool." Therefore, as the manipulation tool engages the baseplates of the claimed invention, the angled perimeter of the second baseplate remains parallel to the angled distal surface of the manipulation tool, while the first baseplate becomes lordodically angled with respect to the second baseplate as shown in Fig. 81 reproduced below. In contrast, Jackson teaches an expansion cap 303 that when engaged to what the Examiner considers as first and second baseplates 330, 331, causes the first and second baseplates to expand away from one another such that while the first baseplate is arguably lordodically angled with respect to the second baseplate as the lower surface of the first baseplate is held against the upper angled surface of the spacer, the angled perimeter of the second baseplate, however, is not parallel and is instead angled with respect to the angled distal surface of the manipulation tool as the angled perimeter of the second baseplate is held against the angled distal surface of the manipulation tool as shown in Fig. 9 of Jackson reproduced below.



In light of the foregoing, Applicants respectfully assert a *prima facie* case of obviousness cannot be made using the cited references. Amended independent claims 1 and 22 are thus unobvious over Gill in view of McGahan and Jackson and are therefore in condition for allowance. Claims 2-8, 10-12, and 14-20 depending from claim 1 are also unobvious, *inter alia*, their dependence from an allowable base claim.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

Application No.: 10/663,493

Docket No.: SPINE 3.0-437 CPCPCPCPCPCPCP

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: August 30, 2010

Respectfully submitted,

Electronic signature:

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